IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

R.C. Rev. .No. 72 of 2007(C)

RCA.167/2001 of RENT CONTROL APPELLATE AUTHORITY, THALASSERY
RCP.22/1996 of MUNSIFF COURT, PAYYANNUR

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REVISION PETITIONERS/RESPONDENTS/PETITIONERS:
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1. E.P. SAINABA, W/O. LATE MUHAMMED KUNHI,

2. E.P. RAFEE, S/O.LATE MUHAMMED KUNHI,

3. E.P. SHAJEER, S/O.LATE MUHAMMED KUNHI,

4. E.P. HARRIS, S/O.LATE MUHAMMED KUNHI.
ALL RESIDING AT N.M.COTTAGE, VELLUR AMSOM,
P.O. KANDOTH, TALIPARAMBA TALUK, KANNUR DISTRICT.
(NO.2 AND 3 ARE REPRESENTED BY NO.4 AS POWER OF ATTORNEY HOLDER).

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS: APPELLANTS/RESPONDENTS:
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1. MUNDAYATAN KIZHAKKE VEETTIL DR.ANAND,
AGED 73 YEARS, KOKKANISSERI, PAYYANNUR AMSOM,
TALIPARAMBA TALUK.

2. DR.S.ANANDABABU, AGED 50 YEARS,
S/O. DR.ANAND, MEDICL PRACTITIONER, KOKKANISSERI,
PAYYANNUR AMSOM, TALIPARAMBA TALUK.

BY ADV. SRI.C.MURALIKRISHNAN (PAYYANUR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

R.C.Rev.No. 72 of 2007-C

Dated, this the 10th day of August, 2007

ORDER

Harun-Ul-Rashid, J.

This revision petition is filed by the landlord against the decision of the appellate authority in R.C.A.No.167 of 2001. Rent Control Petition No.22/1996 was filed by the landlord for eviction of the tenants under secs.11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court allowed eviction under sec.11(2)(b) and 11 (3) of the Act. The Appellate Court reversed the findings of the Rent Control Court allowing eviction on grounds under section 11(3). After the appellate order, the tenant deposited the entire arrears of rent and all the sums to be paid and avoided eviction under sec.11(2)(b). The parties to this revision are referred to as the landlord and the tenant.

2. The landlord, in continuation of the earlier rental arrangement with the tenant, executed a rent deed on 1.11.1992 by fixing Rs.350/- as the monthly rent. While the rental arrangement continued, the landlord on 29.3.1996 issued Ext.A2(a) suit notice demanding vacant possession of the building. In the rent control petition, the bona fide need alleged is for starting a medical shop for his son Rafeeq. His son Rafeeq had completed Pharmacy Course and wanted to run the business in the petition schedule building. The ground floor room was intended for

conducting the medical shop and the upstair portion for storing medicines. It is also averred in the petition that the petitioner has the financial capacity to start the business for his son. It is further averred that the respondent has defaulted in payment of rent and that the rent is in arrears. Therefore, the rent control petition was filed for eviction of the tenant under sec.11(2)(b) and 11(3) of the Act. The tenant contended before the Rent Control Court that the bona fide need put forward by the landlord is not genuine and is really a pretext for eviction. He also contended that he is entitled to the benefit of the second proviso to sec.11(3).

4. Before the Rent Control Court the petitioner was examined as PW.1, the advocate commissioner as PW.2 and the son of the landlord Sri Rafeeq as PW.3. Exts.A1 to A11 are marked on his side. The 2nd respondent was examined as R.W.1, two witnesses as RWs.2 and 3 and Exts.B1 to B14 are marked.

5. The Rent Control Court on an appreciation of the facts, evidence and the entire circumstances came to the conclusion that the need put forward by the landlord for starting the business by his son is a bona fide need. The court also had gone into the question whether the tenant is entitled to protection under the second proviso to sec.11(3) of the Act and found that the tenant had failed to prove that alternate buildings are not available in the locality. Therefore, the findings are recorded ordering eviction under both grounds. The tenant filed appeal before the appellate authority challenging the findings of the Rent Control Court.

6. Three circumstances were taken into account by the appellate authority to find that the bona fide need put forward by the landlord is not correct. One circumstance noticed is that the landlord sent Ext.B1 notice in the year 1991 seeking eviction of the tenant on the ground of bona fide need, but no rent control petition was filed and that was the circumstance pointed out by the Appellate Court that the intention behind the filing of the rent control petition was not for starting any business, but for getting enhanced rate of rent. We find that the circumstance under which Ext.B1 notice was issued was correctly discussed and correct findings are entered by the Rent Control Court. In Ext.B1 notice itself the landlord has stated that his son was a student of pharmacy course at that time and that he needed the petition schedule room by the time of completion of his son's course. That was the reason why he entrusted the shop room to the tenants on a fresh kychit, stipulating 6 months' period for vacating the premises. We find that the landlord's son became qualified during 1993. Ext.A11 is the registration certificate produced in the case.

7. Another circumstance pointed out by the appellate authority is that the landlord's son was not in station at the time of issuing the suit notice and at the time of filing the rent control petition. We may say that the above said circumstances pointed out by the appellate authority do not stand to reason. It is not necessary that either the landlord or his son should be in station for all the time from the date of filing the petition till he got eviction/delivery of the petition schedule building. There is nothing

wrong in the landlord's son doing some job during the pendency of the rent control petition.

8. The third reason stated is that the landlord got a vacant room in the year 1990 and that was not made use of and therefore the present application for eviction is not on genuine grounds. The appellate authority did not take note of the fact that their only purpose behind the filing of the rent control petition is for starting a medical shop business. For that business he wanted atleast two rooms, one for exhibiting the medicines and the other for storing of medicines. Even though one room was vacant in 1990, that cannot be used for the purpose of starting the medical shop because two rooms are necessary for the purpose. Moreover, in1990 the question of starting a medical shop does not arise. His son became qualified to run the shop only in 1993 and therefore, there is no reason or rhyme in saying that he could have started a medical shop in 1990. We have examined all the probabilities, circumstances, facts and evidence in detail. We find no reason to desist from ordering eviction in this case. We also noticed the fact that the findings and deliberations entered by the Rent Control Court on facts are in order and no grounds are made out by the petitioner/tenant for a reversal of the order of eviction by the Appellate Authority. In the circumstances the order passed by the appellate authority cannot stand and therefore it is set aside.

9. The learned counsel for the respondent submitted that for finding out an alternate accommodation, some time is required and therefore the

learned counsel requested this court to grant six months' time. In the circumstances six months' time is granted to the respondent/tenant to vacate the premises on condition that he shall file an affidavit before the Rent Control Court in the form of an undertaking to vacate the premises within six months from today and that all the arrears of rent and the rent from time to time shall be paid every month regularly till the shop rooms are vacated. The affidavit shall be filed within a period of three weeks from today.

There will be no order as to costs.

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

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